

107TH CONGRESS
2D SESSION

H. R. 4187

To amend chapter 22 of title 44, United States Code, popularly known as the Presidential Records Act, to establish procedures for the consideration of claims of constitutionally based privilege against disclosure of Presidential records.

IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 2002

Mr. HORN (for himself, Ms. SCHAKOWSKY, Mr. BURTON of Indiana, Mr. WAXMAN, Mr. OSE, Mr. FRANK, Mr. McDERMOTT, Mr. UDALL of Colorado, Mr. BENTSEN, Mr. ALLEN, Mr. BLAGOJEVICH, Mr. CLAY, Mr. CUMMINGS, Mr. DAVIS of Illinois, Mr. KUCINICH, Mr. LANTOS, Mr. LYNCH, Mrs. MALONEY of New York, Ms. NORTON, Mr. OWENS, Mr. TOWNS, Mr. LATOURETTE, and Mr. BAIRD) introduced the following bill; which was referred to the Committee on Government Reform

A BILL

To amend chapter 22 of title 44, United States Code, popularly known as the Presidential Records Act, to establish procedures for the consideration of claims of constitutionally based privilege against disclosure of Presidential records.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Presidential Records
5 Act Amendments of 2002”.

1 **SEC. 2. PROCEDURES FOR CONSIDERATION OF CLAIMS OF**
2 **CONSTITUTIONALLY BASED PRIVILEGE**
3 **AGAINST DISCLOSURE.**

4 (a) IN GENERAL.—Chapter 22 of title 44, United
5 States Code, is amended by adding at the end the fol-
6 lowing:

7 **“§ 2208. Claims of constitutionally based privilege**
8 **against disclosure**

9 “(a)(1) When the Archivist determines under this
10 chapter to make available to the public any Presidential
11 record that has not previously been made available to the
12 public, the Archivist shall—

13 “(A) promptly provide notice of such deter-
14 mination to—

15 “(i) the former President during whose
16 term of office the record was created; and

17 “(ii) the incumbent President; and

18 “(B) make the notice available to the public.

19 “(2) The notice under paragraph (1)—

20 “(A) shall be in writing; and

21 “(B) shall include such information as may be
22 prescribed in regulations issued by the Archivist.

23 “(3)(A) Upon the expiration of 20 days (excepting
24 Saturdays, Sundays, and legal public holidays) following
25 provision of notice under paragraph (1)(A), the Archivist
26 shall make available to the public the record covered by

1 the notice, except any record (or reasonably segregable
2 part of a record) with respect to which the Archivist re-
3 ceives from a former President or the incumbent President
4 a claim of constitutionally based privilege against disclo-
5 sure that meets the requirements of paragraph (4).

6 “(B) The Archivist may extend the 20-day period for
7 not more than 20 additional days (excepting Saturdays,
8 Sundays, and legal public holidays) if the Archivist deter-
9 mines, based on a showing by the former President or the
10 incumbent President, that such an extension is necessary
11 to allow an adequate review of the record.

12 “(4) A claim of constitutionally based privilege
13 against disclosure meets the requirements of this para-
14 graph if it—

15 “(A) is in writing;

16 “(B) specifies the record (or reasonably seg-
17 regable portion of a record) to which the claim ap-
18 plies;

19 “(C) is signed by the former President or in-
20 cumbent President making the claim; and

21 “(D) states the nature of the privilege and the
22 specific grounds for the claim.

23 “(b) The Archivist shall provide a copy of each claim
24 of constitutionally based privilege against disclosure of a
25 Presidential record—

1 “(1) to the person seeking the record, if any;

2 “(2) to the chairman and ranking minority
3 member of each of the Committee on Government
4 Reform of the House of Representatives and the
5 Committee on Governmental Affairs of the Senate;
6 and

7 “(3) upon request, to any member of the public.

8 “(c)(1) The Archivist shall not release a Presidential
9 record that is subject to a privilege claim submitted by
10 a former President until the expiration of the 20-day pe-
11 riod (excluding Saturdays, Sundays, and legal public holi-
12 days) beginning on the date the Archivist receives the
13 claim.

14 “(2) Upon the expiration of such period the Archivist
15 shall make the record publicly available unless otherwise
16 directed by a court order in an action initiated by the
17 former President under section 2204(e).

18 “(d)(1) The Archivist shall not release a Presidential
19 record that is subject to a privilege claim submitted by
20 the incumbent President unless—

21 “(A) the incumbent President withdraws the
22 privilege claim; or

23 “(B) the Archivist is otherwise directed by a
24 final court order that is not subject to appeal.

1 “(2) This subsection shall not apply with respect to
 2 any Presidential record required to be made available
 3 under section 2205(2)(A) or (C).

4 “(e) The Archivist shall adjust any otherwise applica-
 5 ble time period under this section as necessary to comply
 6 with the return date of any congressional subpoena, judicial
 7 subpoena, or judicial process.”.

8 (b) CONFORMING AMENDMENTS.—(1) Section
 9 2204(d) of title 44, United States Code, is amended by
 10 inserting “, except section 2208,” after “chapter”.

11 (2) Section 2207 of title 44, United States Code, is
 12 amended in the second sentence by inserting “, except sec-
 13 tion 2208,” after “chapter”.

14 (c) CLERICAL AMENDMENT.—The table of sections
 15 at the beginning of chapter 22 of title 44, United States
 16 Code, is amended by adding at the end the following:

“2208. Claims of constitutionally based privilege against disclosure.”.

17 **SEC. 3. EXECUTIVE ORDER OF NOVEMBER 1, 2001.**

18 Executive Order number 13233, dated November 1,
 19 2001 (66 Fed. Reg. 56025), shall have no force or effect.

